

IN SENATE OF THE UNITED STATES.

FEBRUARY 2, 1846.

Submitted, and ordered to be printed.

Mr. DICKINSON made the following

REPORT:

The Committee of Claims, to whom was referred the petition of William Morrow, praying indemnity for losses sustained by him in consequence of the violation of a contract for performing certain work at the Washington arsenal, have had the same under consideration :

Upon a full examination of the merits of the case, which is now for the third time before the Senate, your committee feel convinced that the views taken of the claim by Mr. Hubbard, and set forth in his report thereon, as chairman of the Committee of Claims, on the 21st of February, 1840, are correct. These views have also been satisfactorily sustained by Mr. Wright in his report, as chairman of the above named committee, presented on the 15th of February, 1843, the language of which your committee would adopt. Under the conviction that the claim should not be allowed, your committee recommend the adoption of the following resolution :

Resolved, That the prayer of the petition ought not to be granted.

IN SENATE OF THE UNITED STATES, February 15, 1843.

Mr. WRIGHT, from the Committee of Claims, to whom were referred the petition and papers of William Morrow, of the District of Columbia, on the subject of a contract entered into by him to perform certain work at the United States arsenal in the District, made the following report :

That the claim is not now, for the first time, before the Senate. It was presented at the first session after the claim arose, the session of 1839-'40 ; was referred to this committee, fully considered, as the report of the committee shows, and reported against. (See Senate document No. 216, 1st session 26th Congress.)

The whole matter is within a very small compass. During the session of 1836-'37 Congress made an appropriation, among other expenditures at the Washington arsenal, to fill up a portion of the grounds. The appropriation, though included in the law in a gross sum to be expended at that

arsenal, was, in the estimates submitted from the War Department, upon which that gross appropriation was based, as the papers referred show, a specific sum for this specific object. It does not appear, with certainty, whether or not the department supposed the appropriation for filling these grounds, then made, would be sufficient to accomplish the object. It does appear that the estimate made by the officers in charge of the arsenal, and presented to the head of the Ordnance bureau, was for a larger sum than that covered by the estimate sent to Congress, and that the reduction was made by the chief ordnance officer.

In pursuance of the appropriation, the officer in charge of the arsenal called for proposals for doing the work, and the petitioner was the successful bidder, he offering to do the work for the lowest sum. A contract followed this bid of the petitioner, the parties to which were the officer in command at the arsenal, as the agent of the United States, and the petitioner, acting for himself.

Under the contract so made, the petitioner entered upon the work, and prosecuted it, without any complaint on his part, or on that of the officers of the government, to the extent of the appropriation made, and under which the contract was entered into. He performed, in a satisfactory manner, work which, at the contract price, was equal in value to the appropriation, and received the money, \$12,000, having deposited within the bounds to be filled a number of cubic yards of earth but little short of the whole number of yards named in the contract as the assumed probable amount of the work to be done. That number was 35,000 cubic yards of earth, and the contract price was 35 cents per cubic yard. This amount of filling, at this price, would have entitled the petitioner to \$12,250, and he actually received for the work performed in 1837, \$12,000. Thus far no complaint is preferred on either side. It is not suggested by the petitioner that the contract price was not a fair compensation for the work performed, or that payment for that work was not promptly made in conformity with the contract.

Still the filling was not completed; and at the following session of 1837-'38 Congress made a further appropriation toward that work.

Without seeming to have entertained or considered the question, whether the contract of the petitioner was or was not legally fulfilled, the officer in command at the arsenal, after this second appropriation was made, called upon the petitioner and requested that he should resume the work. The petitioner promptly complied, again entered upon the work of filling the grounds, and continued to deposite earth until the number of cubic yards deposited, during this second year, at the contract price of 35 cents per cubic yard, consumed the appropriation of 1838, applicable to this object; and for which work, performed during this year, he received from the treasury the further sum of \$9,809 09.

Under his contract, therefore, the petitioner had, up to this time, received \$21,809 09 in money, and had deposited between 62,000 and 63,000 cubic yards of earth within the bounds to be filled; thus making the cash receipts of the petitioner exceed the whole amount of the appropriation under which his contract was made by more than \$9,500, and the work actually performed by him exceed the measure of that work hypothetically named in the contract as the whole amount, by more than 27,000 cubic yards of earth, paid for at the contract price.

Thus far no complaint is heard. The work is satisfactorily performed

upon the one side, and the payments are satisfactorily made upon the other; nor is there an intimation, then or now, that the prices paid were not a full and liberal compensation for the service rendered.

At the next session of Congress, in 1838-'39, a still further appropriation was made to complete this work. Before this time the officer in command of the arsenal had been changed. Captain Ramsay, under whose superintendence this contract was made, and who executed it as the agent of the government, had been transferred to another station, and Captain Bell had been put in his place.

Finding funds at his control to complete this work, Captain Bell took up the subject; and finding that, at that time, the contract price given to the petitioner was far beyond the true value of the work to be performed, he was led to examine the extent of the contract under consideration, as tested by the laws of Congress. The sixth section of the act of May 1, 1820, entitled "An act in addition to the several acts for the establishment and regulation of the Treasury, War, and Navy Departments," is in the following words, viz:

"SEC. 6. *And be it further enacted*, That no contract shall hereafter be made by the Secretary of State, or of the Treasury, or of the Department of War, or of the Navy, *except under a law authorizing the same, or under an appropriation adequate to its fulfilment,*" &c.

The remaining language of the section is merely an enumeration of exceptions, not at all material to this question.

The Ordnance department held that the contract entered into between Captain Ramsay, on behalf of the United States, and the petitioner, was a contract falling within this provision of law, and that, therefore, it was in a legal sense a contract extending only to the appropriation of 1835-'37, under which the contract was made; that the continuance of the work by the petitioner, at the request of Captain Ramsay, under the appropriation of 1837-'38, was a practical revival of the contract of the previous year, and an extension of it over the appropriation of the next subsequent year, by the parties to the original contract, and could not, under the provision of the law above referred to, receive any other construction. In these legal positions, the committee think the ordnance officers were right.

The papers show that the opinion of Captain Ramsay was different; and were it shown that this error of opinion on his part, he being the agent of the government in making the contract, had operated to the injury, *in fact*, of the petitioner, by inducing him to enter into a disadvantageous and losing contract, considerations of an equitable character, as between the petitioner and the national legislature, might embarrass the committee in coming to the conclusion to which they have come upon this claim; but as they feel fully authorized, from the statements of the petitioner himself, to infer that he had a very beneficial contract, that he made generous profits upon the work he did perform, and that his only complaint is that he did not have the opportunity to make equal, if not greater profits upon the work remaining to be done, after his two years of service, they do not find any considerations of an equitable character to repel that conclusion.

Captain Bell determined that the contract was not binding upon him, as to the expenditure of the appropriation of 1838-'39, and he let the work to another at 26½ cents per cubic yard—a saving upon each cubic yard of earth deposited to complete this filling of 8½ cents. The whole number of yards of filling under this last contract was 10,872, and the saving, as compared

with the petitioner's contract, was \$924 12. Whether this presents the measure of the petitioner's claim, the papers do not show, and the committee are, therefore, unable to say whether or not the second contractor, at 26½ cents per cubic yard, had a mere fair or a very profitable contract. No complaint from that quarter has reached the committee, nor are they aware that any such complaint has been made in any direction.

These facts, the committee must believe, authorize them to assume that the claim of the petitioner is rested upon purely *legal*; and not upon *equitable* grounds, so far as his interests are involved; and, as they have already expressed their opinion in favor of the course of the ordnance officers, and against the petitioner, upon the *legal* question raised, this would seem to dispose of the claim, whether as a legal or equitable one.

The claimant urges that, if the contract be in violation of the act of 1820, above quoted, as he made it with an officer of the government, he ought not to suffer because that public agent did not understand the law, or, understanding, did not follow it. The committee think several answers present themselves to this ground of claim. In the first place, they do not think the terms of the contract are such as necessarily to violate the law, or make it an illegal and void contract. If it be construed, as the ordnance officers have construed it, as a contract for the expenditure of the appropriation existing at the time it was made, there is no conflict with the law, and the terms used in reference to the amount of labor to be performed, however broad in themselves, would be restrained by the stipulations as to price, and the extent of the fund to meet that price. These too would be limitations which the contractor, to do the work, would be most certain to regard, as he would not desire to bestow labor beyond the means for compensation.

Still the committee can feel no anxiety as to this rule of construction for the terms of the contract, if the claimant shall choose to insist that a broader rule should be adopted, so as to bring the contract in necessary conflict with the law, because, in that case, while the agent of the government should have known the law and regarded it, if he did not, the petitioner too was equally bound to have known and obeyed that law; and however plausible an equitable claim might have been founded upon ignorance on his part, when addressing himself to the law-making power, and showing actual loss and injury, it will not be pretended that ignorance of the law, and a violation of the law throughout that ignorance, can lay the foundation for a *technical legal* right, even on behalf of a claimant before Congress. Such a claim could only be specially made when *equitable* considerations could be brought to its support.

The committee therefore adopt the conclusion to which their predecessors came, and they annex to this report the contract itself, and a letter from the Ordnance office, showing the construction there put upon it, that all may have the means of testing the correctness of their conclusions. They offer for the adoption of the Senate the following resolution:

Resolved, That the prayer of the petitioner ought not to be granted.

Articles of agreement made on the 10th day of April, A. D. 1837, between Captain George D. Ramsay, commanding officer, Washington arsenal, of the one part, and William Morrow, of the city of Washington, District of Columbia, of the other part.

This agreement witnesseth, that the said Captain George D. Ramsay, for and on behalf of the United States of America, and the said William Morrow, for himself, his heirs, executors, and administrators, have mutually agreed, and by these presents do mutually covenant and agree, to and with each other, in the manner following, to wit:

1st. That the said William Morrow shall fill up the space at the Washington arsenal, between the sea-wall (on the eastern and northeastern points) and the present shore, with good earth, say 35,000 cubic yards (more or less); said filling to be done under the supervision of the commanding officer of said arsenal, in such manner as he may determine; the work at all times to be under his the commanding officer's directions.

2d. The said William Morrow shall complete the delivering and filling in of 35,000 cubic yards on or before the 1st day of October, 1837.

3d. The measurement of the said earth shall be made in the embankment from which it is taken.

4th. All the labor and materials of the above named work shall be furnished by the said William Morrow.

5th. The United States agree to pay the said William Morrow, for every cubic yard (27 cubic feet) of earth so delivered, thirty-five cents.

6th. The payment for the above work shall be made monthly, and the United States shall retain ten per centum on all sums so paid, until the work is completed; said ten per centum to be forfeited to the United States in case the said William Morrow shall fail to perform his part of this agreement.

It is directly understood that the above stipulated amount is all that the said William Morrow shall receive; that no extras of any kind shall be charged or paid for, any custom or usage to the contrary notwithstanding.

7th. No member of Congress shall in any way be interested in this agreement.

In witness whereof, the undersigned have hereunto placed their hands and seals, the year and day first above written.

GEO. D. RAMSAY, [L. s.]

Captain of Ordnance, Commanding.

WM. MORROW, [L. s.]

Witness to the signature of Captain Ramsay:

JNO. B. SCOTT, *Lt. U. S. A.*

Witness to the signature of William Morrow:

THOMAS SEWELL.

Approved.

GEO. BOMFORD,

Colonel of Ordnance.

A true copy.

G. TALCOTT,

Lieut. Colonel of Ordnance.

ORDNANCE OFFICE,
Washington, March 28, 1839.

SIR: On the subject of Mr. Morrow's letter, respecting his contract for work at Washington arsenal, I have the honor to report that the matter is under examination in this office, on the direct application of Mr. Morrow.

It appears that Mr. Morrow contracted to fill in a certain space of marsh at Washington arsenal with earth, say 35,000 cubic yards, more or less, at 35 cents a yard, and the quantity of filling just stated (35,000 cubic yards) was to be done by the 1st of October, 1837; this would amount to \$12,250, and in that year he was paid for the work \$12,000. In 1838, another appropriation having been made, he was allowed to go on under the same contract, and in that year he was paid \$9,809 91. His present object is to continue the work, under the impression that he is entitled to finish the whole of the filling required.

Captain Ramsay has stated that this was his understanding of the agreement; but the terms of the contract do not appear to bear this construction, and such an arrangement is expressly prohibited by the act of the 1st May, 1820, directing that no contract shall be made "*except under a law authorizing the same, or under an appropriation adequate to its fulfilment.*"

Captain Bell, finding that the work can now be done at 26 cents a yard, was proceeding to make arrangements accordingly for continuing the work on those terms, provided there shall be any funds applicable to it, after completing other improvements which he is directed first to make.

Under all the circumstances, it appears to me that Mr. Morrow is entitled to nothing more than to be permitted to continue the work (if there should be any means of doing so) on terms compatible with the public interest. In consideration of his having incurred expenses in the erection of a bridge, and having made other arrangements for the purpose, I would recommend that a preference be given to him, if he is willing to do the work on such terms.

I have the honor to be, &c.,

GEO. BOMFORD,
Colonel of Ordnance.

Hon. J. R. POINSETT,
Secretary of War.

A true copy.

G. TALCOTT,
Lt. Col. Ordnance.

1817 Session, and passed on the 12th day of April, 1817, by a vote of 21 yeas to 19 nays. The bill was then sent to the Senate, where it was read on the 12th day of April, 1817, and passed on the 13th day of April, 1817, by a vote of 19 yeas to 11 nays.

IN SENATE OF THE UNITED STATES

REPORT OF THE SELECT COMMITTEE ON THE PETITION OF THE CITIZENS OF THE DISTRICT OF COLUMBIA, FOR THE ESTABLISHMENT OF A NATIONAL UNIVERSITY.

ALBANY: PUBLISHED BY G. T. AND SONS, 1817.

THE SENATE OF THE UNITED STATES, IN SENATE CHAMBER, ON THE 12TH DAY OF APRIL, 1817, PASSED THE FOLLOWING RESOLUTION: That the Committee on the Petition of the Citizens of the District of Columbia, for the Establishment of a National University, be and they are hereby directed to report thereon to the Senate.

AND THAT THE COMMITTEE ON THE PETITION OF THE CITIZENS OF THE DISTRICT OF COLUMBIA, FOR THE ESTABLISHMENT OF A NATIONAL UNIVERSITY, BE AND THEY ARE HEREBY DIRECTED TO REPORT THEREON TO THE SENATE.

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The following is a list of the names of the persons who have been appointed to the various offices of the Government, and who have taken the oaths of office and qualification, and are now acting in their respective offices.

President of the United States
John Adams

Vice President of the United States
Thomas Pinckney

Secretary of State
Thomas Jefferson

Secretary of the Treasury
Alexander Hamilton

Secretary of War
Nicholas Biddle

Attorney General
Edmund Randolph

Comptroller of the Treasury
Samuel D. Ingham

Director of the Mint
David Rittenberg

Director of the Land Office
Nicholas Biddle

Director of the Indian Affairs
Nicholas Biddle

Director of the Marine Affairs
Nicholas Biddle

Director of the Naval Affairs
Nicholas Biddle

Director of the Military Affairs
Nicholas Biddle

Director of the Civil Affairs
Nicholas Biddle

Director of the Foreign Affairs
Nicholas Biddle

Director of the Internal Affairs
Nicholas Biddle

Director of the Public Affairs
Nicholas Biddle

Director of the Private Affairs
Nicholas Biddle

Director of the General Affairs
Nicholas Biddle

Director of the Special Affairs
Nicholas Biddle

Director of the Miscellaneous Affairs
Nicholas Biddle

Director of the Unassigned Affairs
Nicholas Biddle

Chief of the Office

James A. B. [illegible]
Secretary of War

G. TALCOTT
At the Office